

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TYRONE JACOB)	
Claimant)	
VS.)	
)	Docket No. 1,009,280
SHAWNEE COUNTY)	
Self-Insured Respondent)	

ORDER

Claimant appealed the August 30, 2004 Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on February 1, 2005, in Topeka, Kansas.

APPEARANCES

John M. Ostrowski of Topeka, Kansas, appeared for claimant. Larry G. Karns of Topeka, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record and the parties' stipulations are listed in the Award. For clarification, the record also includes the March 19, 2004 medical report of Dr. Peter V. Bieri, who evaluated claimant at the Judge's request.

ISSUES

On August 14, 2002, claimant injured his left index finger while working for respondent. In the August 30, 2004 Award, Judge Avery adopted the functional impairment rating provided by Dr. Bieri and determined claimant sustained a four percent functional impairment to his left hand. The Award stated, in part:

Because grip strength was the principal difference between Dr. Bieri's rating and that of Dr. Ketchum, the court adopts Dr. Bieri's rating because it is more likely

than not that claimant's grip strength improved during the interval between Dr. Ketchum's rating and that of Dr. Bieri.¹

Claimant contends Judge Avery misconstrued the evidence. Claimant argues Dr. Ketchum's 11 percent functional impairment rating to the left hand is not inflated as it represents claimant's grip strength loss and does not include any impairment for pinch strength loss, lost range of motion, or pain. Claimant also argues Dr. Ketchum recognized claimant's grip strength had improved in the interval between his examination and Dr. Bieri's examination but that such change did not alter the functional impairment rating. In addition, claimant contends Dr. Ketchum's method of calculating claimant's functional impairment is the only one that is adequately explained in the record and, therefore, is the most persuasive. Accordingly, claimant requests the Board to modify the Award and award him benefits for an 11 percent permanent disability to the hand. In the alternative, claimants asks for permanent disability benefits for a 7.5 percent functional impairment to the hand.

Conversely, respondent contends the Award should be affirmed. Respondent argues Dr. Bieri, who was selected by the Judge to provide an independent medical evaluation, did not deem it appropriate to rate claimant on the basis of decreased grip strength, which Dr. Ketchum conceded would likely improve. Accordingly, respondent contends Dr. Bieri's functional impairment opinion is the most persuasive and, therefore, the Award should be affirmed.

The only issue before the Board on this appeal is the amount of functional impairment claimant sustained due to his August 14, 2002 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. Claimant dislocated his left index finger on August 14, 2002, while operating a road grader. The accident arose out of and in the course of claimant's employment with respondent.
2. Following the injury, claimant received conservative medical treatment from Dr. Donald T. Mead, who is board-certified in occupational medicine. At the conclusion of treatment in early January 2003, Dr. Mead rated claimant as having a six percent functional impairment to the index finger or a one percent functional impairment to

¹ ALJ Award (Aug. 30, 2004) at 2.

the hand. According to the doctor, he rated claimant under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.) for lost range of motion.² While analyzing claimant's impairment, the doctor had claimant squeeze two of the doctor's fingers, concluding claimant "had a good solid grip that was subjectively equal in both hands" ³ Dr. Mead testified, in part:

Q. (Mr. Karns) This injury was to the index finger, the joint closest to the hand. Is that -- would that affect someone's gripping ability?

A. (Dr. Mead) It would have minimal affect on gripping. The second MCP joint, the second knuckle provides very little input into grip strength. It is much more important for pinch strength. But for gripping, for example, if you grab your index finger with your -- if you grab the other index finger and squeeze, grip with just the index finger, you can apply literally only a pound or two of pressure. But if you grab with the third, fourth and fifth fingers, that is where you get 95 or more percent of your grip strength.⁴

3. At his attorney's request, claimant was evaluated by hand specialist Dr. Lynn D. Ketchum. Dr. Ketchum saw claimant on September 30, 2003, and determined claimant dislocated his left index finger and tore the radial collateral ligament of the metacarpophalangeal joint in the August 2002 accident at work. According to Dr. Ketchum, the injury decreased claimant's range of flexion in the left index finger and decreased the grip and pinch strength in claimant's left hand. Dr. Ketchum (unlike Dr. Mead) did a stress x-ray, which helped delineate the extent of claimant's injury. Using the AMA Guides (4th ed.), Dr. Ketchum calculated claimant's functional impairment at 11 percent to the hand due to claimant's loss of grip strength. The doctor testified, in part:

The rating was 10 percent permanent partial impairment of the left upper extremity based on Table 34 Page 65 of the Fourth Edition of the AMA Guides. That in turn was based on the fact that he had a grip strength index of 30 when I examined him. He had a normal bell-shaped curve using the Jamar dynamometer and in the 5-step technique, peaking at 90 pounds on the right, 58 pounds on the left. Key pinch likewise was significantly reduced, being 23 pounds on

² Mead Depo. at 7.

³ *Id.* at 8.

⁴ *Id.* at 8.

the right, 17 pounds on the effected [sic] left side. Tip to tip pinch was 13 pounds right and 10 pounds left.

. . . .

Table 34 states that with a grip strength index of over 10, that it relates to a 10 percent impairment of the upper extremity. Actually with an impairment, actually with an index of 30 or above it would be a 20 percent. I rated it as a 10 percent because it just involved one digit.

. . . .

It would be an 11 percent impairment of the hand.⁵

4. According to Dr. Ketchum, using Dr. Bieri's findings concerning claimant's loss of grip strength would not alter the functional impairment rating for claimant's hand.⁶ Dr. Ketchum, however, testified the *AMA Guides* would rate claimant's functional impairment to the hand, excluding any impairment for pain, at 7.5 percent considering the lost range of motion in the finger and the finger's lateral deviation.⁷ Dr. Ketchum initially utilized the loss of strength method in evaluating claimant's impairment as he believed the strength deficit in claimant's hand affected his life more than anything else.
5. At Judge Avery's request, Dr. Peter V. Bieri examined claimant and provided the Judge with his medical opinions. In a March 2004 report to the Judge, Dr. Bieri concluded claimant sustained a four percent functional impairment to his left hand. Unlike Dr. Ketchum, Dr. Bieri did not believe claimant's grip strength loss should increase his functional impairment rating under the *AMA Guides*. The doctor wrote, in part:

Twenty percent (20%) left index finger impairment is awarded for residuals of dislocation and strain, with reference to pages 58-60. This translates to four percent (4%) hand impairment, with reference to page 18.

⁵ Ketchum Depo. at 7-8.

⁶ *Id.* at 22.

⁷ *Id.* at 11, 21.

Such impairment is directly attributable to injury reported on or about August 14, 2002.

While the claimant has some element of decrease in grip strength, with reference to pages 66-67, no additional impairment is appropriate for strength loss.⁸

6. Considering the opinions from the three medical experts, claimant's functional impairment to his hand lies somewhere between one and 11 percent. The Board is not persuaded that one doctor's opinion is more accurate than the opinions of the other two. Accordingly, the Board finds claimant has sustained a six percent functional impairment to his hand due to his August 14, 2002 accident. Therefore, claimant is entitled to receive permanent disability benefits for a six percent disability to his left hand under K.S.A. 44-510d.

AWARD

WHEREFORE, the Board modifies the August 30, 2004 Award to grant claimant permanent disability benefits for a six percent disability to the left hand under K.S.A. 44-510d.

Tyrone Jacob is granted compensation from Shawnee County for an August 14, 2002 accident and resulting disability. Based upon an average weekly wage of \$621.88, Mr. Jacob is entitled to receive nine weeks of permanent partial disability benefits at \$414.61 per week, or \$3,731.49, for a six percent permanent partial disability, making a total award of \$3,731.49, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

⁸ Bieri report (Mar. 19, 2004) at 5.

Dated this ____ day of February 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director